

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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LARRY K. VANWINKLE and  
TRESA A. VANWINKLE,

Plaintiffs,

vs.

Civ.No. 98-0052 WWD/DJS ACE

TIM CAPPELLI and SHERRY CAPPELLI,  
COLBYCO INDUSTRIES, L.L.C., a Texas  
limited liability company, ATLANTIS  
ENTERPRISES, INC., a Texas corporation and  
ICHAUWAY MILLS, INC., a Texas corporation,

Defendants.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court upon Plaintiffs' Motion to Quash Defendant Cappelli Industries, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction, Defendants Cappelli Industries, Ltd. and Tim Cappelli's Response to Plaintiffs' Motion to Enforce and Defendants Cappelli Industries, Ltd.'s and Tim Cappelli's Joinder in Defendant Ichauway Mills, Inc.'s Motion for Summary Judgment on Computation of Damages, filed May 11, 2001 (**Doc. 184**). Plaintiff's motion is based on the failure of Defendants' counsel to be admitted to practice in the state of New Mexico and the Federal Courts of this state and failure to obtain local counsel pursuant to the rules. D.N.M.LR.-Civ. 83.3. By the time Defendants filed their response to the instant motion, Defendants retained local counsel (Mr. John Newman Carr, Esq.). According to Defendants, previous counsel withdrew for non-payment of fees.

Granting Plaintiffs' request to quash certain pleadings makes little sense at this point, despite Defendants' procedural shortcomings. See D.N.M.LR-Civ. 1.7 (rules may be waived by

judge to avoid injustice). Little would be gained in either striking or allowing Defendants to refile the offending pleadings, whereas considerable amounts of resources in the way of time and expense – both for the Court as well as counsel’s clients – would be lost in doing so. Also, the motion is moot for the most part. The Court has already ruled on the motion for summary judgment on computation of damages (Doc. 227).

**WHEREFORE,**

**IT IS ORDERED** that Plaintiffs’ Motion to Quash Defendant Cappelli Industries, Ltd.’s Motion to Dismiss for Lack of Personal Jurisdiction, Defendants Cappelli Industries, Ltd. and Tim Cappelli’s Response to Plaintiffs’ Motion to Enforce and Defendants Cappelli Industries, Ltd.’s and Tim Cappelli’s Joinder in Defendant Ichauway Mills, Inc.’s Motion for Summary Judgment on Computation of Damages (**Doc. 184**) is hereby DENIED.

  
UNITED STATES MAGISTRATE JUDGE